

Chapter 2-000 Community-Based Waiver Services for Adults with Mental Retardation or Related Conditions

2-001 Introduction: The Nebraska Medical Assistance Program (NMAP) offers, under a waiver of statutory requirements, an array of community-based services to individuals, age 21 or older, who are eligible for Intermediate Care Facility for the Mentally Retarded (ICF/MR) services under NMAP. The purpose of the waiver services is to offer options to clients who would otherwise require ICF/MR services.

Nebraska's waiver is limited in amount, scope, and duration. The number of available slots for waiver services each year is designated in the approved waiver.

The Nebraska Department of Social Services shall provide opportunities for fair hearings as defined in 42 CFR 431, Subpart E, to clients, or their legal representatives, who are denied eligibility for waiver services, who are not given the choice of home and community-based services as an alternative to ICF/MR services, or who are denied the services of their choice (see 465 NAC 2-001.02 and 2-006 ff.).

A provider of waiver services has the right to appeal for a hearing on an action by the Department of Social Services that has a direct adverse effect on the provider (see 471 NAC 2-003 ff.). Hearings are scheduled and conducted according to the procedures in 465 NAC 2-001.02 ff. and 2-006 ff., excepting appeals of Department of Health certification determinations. Appeals on these issues will be conducted in accordance with Rules of Practices and Procedures of 184 NAC Chapter 1.

2-001.01 Legal Basis: Section 1915(c) of the Social Security Act permits the Health Care Financing Administration (HCFA) to approve waivers of statutory requirements requested by the states. Federal regulations concerning home and community-based waivers appear at 42 CFR 440.180 and Part 441, Subpart G.

The Nebraska Department of Social Services is the single state agency responsible for administering Nebraska's Home and Community-Based Services Waiver for Persons with Mental Retardation or Related Conditions. Functions of the waiver may be assigned through interagency agreements.

2-001.02 Definitions: The following definitions apply to the waiver services for adults with mental retardation or related conditions.

Adaptive Behaviors: The actions of an individual that meet the standards of independence, maturation, learning, and social responsibilities expected for his/her age.

Adult: An individual age 21 or older.

Agency: An administrative structure and the persons within that structural entity defined by law, charter, license, contract, or agreement that may be delivering services to persons with developmental disabilities.

Aversive Stimulus: A negative, unpleasant, or punishing incentive.

Behavior Management Program: The interventions employed to increase socially acceptable behaviors and to modify maladaptive or inappropriate behaviors. These programs must emphasize the development of desirable and adaptive behaviors, rather than merely the elimination or suppression of undesirable ones.

Case Management: Services provided to waiver clients under the State Plan, which consist of -

1. Assessment (or arrangement for assessment) of individual needs level and requirement for support and services;
2. Development of individual support and service goals;
3. Coordination of personal, agency, non-agency, and professional resources to develop and attain individual support and service goals and access needed medical, social, habilitation, education, employment, housing, and other services.

Case Manager: (May also be referred to as Service Coordinator) The person in the certified agency who is responsible for coordinating the waiver client's program plan and services received.

Certification: The status granted to providers by the Nebraska Department of Health indicating approval of submitted proposal to provide state plan or waiver services. This may be substantiated by on-site surveying.

Client: Any person with mental retardation and/or a related condition who has been determined eligible for the waiver.

Consent: Agreement by the client or the client's legal guardian in accordance with applicable state and federal law or regulation.

Day Services Habilitation: Essential interventions, designated in an IPP, which develop and retain capacity for independence, self care, social and/or economic functioning provided in a certified day services setting or other location consistent with specifications for Supported Employment.

Department: The Department of Social Services (DSS).

Developmental Disability: See Related Conditions.

Documentation: Written, dated, and authenticated evidence.

Family Support Services: Services to assist clients and their families by providing Independent Skills and/or Respite Care services as needed. These services represent essential interventions, designated in an IPP, which develop and retain the client's capacity for independence, self care, social and/or economic functioning.

Final Plan of Care: For waiver clients, the final plan of care (IPP) established by the Interdisciplinary Team within 30 calendar days after the client is initially admitted into waiver services.

Generic Services: Traditional services and assistance offered to multiple populations through public and private agencies and other sources.

Governing Authority: The entity that provides oversight, governance, and policy direction for the operation of a provider's programs.

Habilitation Plan: The written plan for waiver clients, documenting a planned process of programmed objectives that result in attainable goals for the client. This is also referred to as the Individual Program Plan (IPP).

Habilitation Services: Waiver services defined as an aggregate set of essential interventions, designated in an IPP, which develop and retain capacity for independence, self-care, and social and/or economic functioning.

Independent Skills: Essential interventions, designated in an IPP, which develop and retain the client's capacity for independence, self care, social and/or economic functioning. These services may be provided in the client's living situation or in the community and may include training offered to the family for the purpose of promoting independence of the client.

Individual Program Plan (IPP): A written plan specifying agreed-upon goals, methods to assist in achieving those goals, and services to be provided to address identified client strengths, needs, and preferences. May also be known as the plan of care.

Interdisciplinary Team: A group composed of the client, client's family as appropriate, his/her representative, and persons representing the professions, disciplines, or relevant service areas, including the Service Coordinator. This team is responsible for the development and implementation of the IPP.

Intermediate Care Facility for the Mentally Retarded (ICF/MR): An institution certified by the Nebraska Department of Health that provides habilitative and health services for persons with mental retardation or related conditions.

Least Restrictive Services: The most appropriate services which meet a client's individual needs with a minimum amount of limitation, intrusion, or disruption and which enable the client to exercise maximum possible personal choice in daily activities.

Maladaptive Behavior: Actions that are aggressive, destructive, self-abusive, or a danger to self or others.

Mental Retardation: The significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested before the person attains age 22.

Preliminary Plan of Care: The Interdisciplinary Team's documented preliminary, comprehensive plan for a client (Form DSS-3MR).

Pre-Vocational Services: Waiver services which are goal-oriented tasks for clients for whom there is no expectation of paid employment within a year.

Provider: An agency certified by the Nebraska Department of Health for provision of waiver services.

Related Conditions: Conditions causing challenges similar to mental retardation. A client with a "related condition" is one who has a severe, chronic disability other than mental illness which -

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care;
 - b. Receptive and expressive language development;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction;
 - f. Capacity for independent living; and
 - g. Economic self-sufficiency; and
5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

This may also be referred to as developmental disability.

Respite Care: Services which provide temporary relief to the family from the continuous support and care of the client by providing supervision of the client in the client's living situation or in the community.

Restraint: Any intervention or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding devices used to provide support for the achievement of functional body position or proper balance, or devices used for specific medical and surgical (as distinguished from behavioral) treatment.

Seclusion: Placement of an individual alone in an area which is not under observation and from which exit is prohibited.

Service: A direct intervention for increasing and maintaining the client's ability for independent living and self-determination.

Service Coordination: See Case Manager.

Setting: Agency-staffed facility in which waiver services are provided. This location requires certification.

Site: In-home or community location where waiver services are provided. This location does not require certification.

Slot: The waiver designation for the services received by a single client.

Specialized Service: Service provided specifically for persons with developmental disabilities by certified agency.

Supported Employment: Waiver services to sustain paid employment for clients for whom competitive employment at or above minimum wage is unlikely.

Time-Out Procedure: Removal of an individual from a situation wherein undesired behavior is exhibited.

Time-Out Room: Area in which a client is isolated, but under constant staff observation, and prevented from leaving without staff approval.

Training: An organized approach to the provision of habilitation services.

Waiver: Nebraska Home and Community-Based Services Waiver for Persons with Mental Retardation or Related Conditions.

Waiver Year: October 1 through September 30.

2-001.03 Summary of Forms: The following forms are used for waiver services. Instructions for these forms are located in the appendix.

| <u>Form Number</u> | <u>Form Name</u> | <u>Manual Reference</u> |
|--------------------|--|-------------------------|
| DSS-1MR | Home and Community Based Services Waiver for Persons with Mental Retardation or Related Conditions Consent Form | 480-000-3 |
| DSS-2MR | Developmental Index | 480-000-4 |
| DSS-3MR | Habilitation Services Preliminary Plan of Care | 480-000-5 |
| DSS-4A | Social Services Provider Authorization | 480-000-7 |
| DSS-5MR | Request for Services - Mental Retardation or Related Conditions | 480-000-9 |
| DSS-6 | Client's Notice of Action | 480-000-11 |
| --- | Proposal to Provide Specialized Services Under the Authority of the Nebraska Home and Community-Based Services Waivers for Persons With Mental Retardation or Related Conditions | 480-000-201 |

2-002 Description of Waiver Services: Nebraska's waiver allows for the provision of Habilitation Services and Family Support Services to promote client independence and integration and to support the family.

2-002.01 Habilitation Services: An aggregate set of essential interventions, designated in an IPP, which assist the client to develop and retain the capacity for independence, self-care, and social and/or economic functioning. This planned process of programmed objectives must result in attainable goals for the client. Habilitation may be provided as day and/or residential services and on a part-time or full-time basis. Clients receiving less than full-time services must require and receive other non-Medicaid funded supports when not in waiver funded services.

Habilitation services must assist or support the client in developing or, where no further progress is probable, maintaining his/her skills such as -

1. Eating and drinking;
2. Toileting and dressing;
3. Mobility such as the use of a walker and learning proper balance and posture;
4. Basic skills such as number concepts and attending to tasks;
5. Basic home management skills such as housecleaning and assisting with meal preparation;
6. Socialization skills such as cooperating and taking responsibility;
7. Communication skills including receptive and expressive language development;
8. Sensorimotor skills such as manipulation of objects and recognition of sights and sounds; and
9. Other skills such as eye-hand coordination, visual processing, and interpersonal skills, to increase independent functioning.

2-002.01A Pre-Vocational Services: These services will be provided through waiver funding only for those waiver-eligible individuals who formerly received services in a Medicaid-certified Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), or ICF/MR. Documentation will be maintained to show that these services are not otherwise available under a program funded by P.L. 94-142 or the Rehabilitation Act of 1973, Section 110.

Pre-Vocational Services are goal-oriented tasks for clients for whom there is no expectation of paid employment within a year. Pre-Vocational Services consist of training in -

1. Task completion;
2. Attendance and work habits;
3. Appropriate behavior in crowds;
4. Skill training;
5. Communication skills, including receptive and expressive language development;
6. Socialization skills; and
7. Sensorimotor skills.

Pre-vocational and day services may occur at the same setting with the same supervisory arrangements.

2-002.01B Supported Employment Services: These services will only be provided through waiver funding for those waiver eligible individuals who formerly received services in a Medicaid-certified SNF, ICF, or ICF/MR. Documentation will be maintained that these services are not otherwise available under a program funded by P.L. 94-142 or the Rehabilitation Act of 1973, Section 110.

Supported Employment Services are employment-directed activities for clients for whom competitive employment at or above minimum wage is unlikely and who, because of their disabilities, need ongoing support to perform in a work site. Supported Employment Services consist of any of the following activities which may be needed to sustain paid work:

1. Individualized or group counseling;
2. Job development and placement;
3. Ongoing supervision and monitoring;
4. On-the-job training of work and work-related skills required to perform the job; or
5. Training in related skills essential to obtaining and retaining employment, such as the effective use of community resources and transportation.

Supported Employment Services may be provided in a variety of situations which may include work sites in which persons without disabilities are employed.

2-002.01C Day Services Habilitation Services: Day Services Habilitation Services are provided in certified day service settings or other locations consistent with specifications for Supported Employment. Day Services Habilitation may include those services provided under Habilitation Services and/or Pre-Vocational or Supported Employment Services.

2-002.02 Family Support Services: Family Support Services are services offered by a provider to assist clients and their families by providing Independent Skills and/or Respite Care as needed. These services represent essential interventions, designated in an IPP, which develop and retain the client's capacity for independence, self care, social and/or economic functioning.

2-002.02A Independent Skills Services: Independent Skills Services are provided in the client's living situation or in the community and are designed to actively increase the functional or behavioral ability of the client to live within his/her family or community. Independent Skills Services may include those services provided under Habilitation Services (see 480 NAC 2-002.01, 1-9). Independent Skills Services may include training offered to the family for the purpose of promoting independence of the client.

2-002.02B Respite Care Services: Respite Care Services are those services which provide temporary relief to the family from the continuous support and care of the client by providing supervision of the client. These services may be provided in the client's living situation and/or in the community. Respite care shall be provided for a period of time determined by the interdisciplinary team as meeting the client's needs, not to exceed 30 days per waiver year for out-of-home respite.

If respite is provided by a hospital or nursing facility, the individual is not considered a facility resident for the purpose of the waiver.

2-002.03 Transportation Services: Transportation of clients to services and activities identified in their IPPs is included as a component of other waiver services provided.

2-002.04 Case Management Services: For waiver-eligible clients, case management services are provided under the State Plan.

2-003 Waiver Responsibilities of State Agencies: The Nebraska waiver is organized as an interagency effort at the state level, utilizing a variety of community agencies for service delivery.

2-003.01 Department of Social Services (DSS): As the state Medicaid agency, DSS is responsible for administration of the Medicaid program and in turn for the administration of the waiver which includes:

1. The establishment of interagency agreements;
2. Planning and policy development;
3. Establishment and interpretation of regulations;
4. Client intake which includes eligibility determination, habilitation plan approval, and ongoing monitoring of plan implementation;
5. Implementation of the waiver;
6. Monitoring of the waiver; and
7. Budgeting.

2-003.02 Department of Public Institutions (DPI): Under an interagency agreement with DSS to implement the waiver, DPI is responsible for -

1. Establishing provider agreements for delivery of waiver services;
2. Gathering and compiling statistics needed for management and reporting purposes and forwarding those reports to DSS;
3. Ensuring compliance with 205 NAC 1-5, Regulations for Organizing and Implementing Services for Persons with Developmental Disabilities in Community-Based Programs, and reporting areas of non-compliance to the Department of Health and DSS;
4. Providing formal training and ongoing technical assistance to address identified needs and the dissemination of information to providers;

5. Establishing individual client service agreements with providers which link waiver reimbursement to client need and IPP expectations as determined by the team;
6. Reviewing IPPS on a random or as requested basis to ensure compliance with 205 NAC 1-5 and relevant waiver regulations;
7. Working with providers to obtain additional information or clarifications, as needed;
8. Maintaining required records; and
9. Processing and monitoring billings for services provided.

2-003.03 Department of Health (DOH): Under an interagency agreement with DSS, DOH is the agency responsible for -

1. Certifying provider agencies and their programs for the waiver with on-site reviews to ensure compliance with waiver standards (480 NAC 3-000 ff.) and proposal to provide services;
2. Conducting and reporting on investigations of complaints related to waiver settings;
3. Reporting areas of noncompliance to DSS and DPI;
4. Issuing to providers, as appropriate, a statement specifying areas of noncompliance or a letter of compliance following on-site monitoring; and
5. Maintaining records and providing reports of certification surveys to DSS.

2-004 Record-Keeping: DSS, DPI, DOH, and waiver services providers have specific record keeping responsibilities under the waiver.

2-004.01 DSS: The Department of Social Services shall maintain the following waiver-related records.

2-004.01A Client Case File: DSS shall maintain in client case files the following information for all waiver-approved clients:

1. Form DSS-5MR, "Request for Services - Mental Retardation or Related Conditions;"
2. Form DSS-2MR, "Developmental Index;" Form DSS-3MR, "Habilitation Services Preliminary Plan of Care;" current individual program plans; and any other information used in determining eligibility;
3. Form DSS-1MR, "Home and Community-Based Services Waiver for Persons with Mental Retardation or Related Conditions Consent Form;"
4. Narrative documentation of client contacts as appropriate;
5. Form DSS-6, "Client Notice of Action," as appropriate; and
6. Form DSS-4A, "Social Services Provider Authorization."

2-004.01B Agency Records: DSS shall maintain the following information:

1. Interagency agreements; and
2. Billing and payment records.

2-004.02 DPI: The Department of Public Institutions shall maintain for four years the following material:

1. Documentation which supports the provision of services to each client served under the waiver;
2. Any other documentation determined necessary by DSS to support selection and provision of services under an IPP;
3. Financial information necessary to allow for an independent audit under the waiver program;
4. Documentation which supports requests for payment under the waiver; and
5. Contracts with agencies for the provision of services.

2-004.03 DOH: The Department of Health shall maintain for four years the following material:

1. Provider proposals submitted for certification purposes;
2. Copies of all correspondence related to the proposals, including requests for additional information and responses;
3. Records of complaints received and action taken;
4. Corrective action plans and action taken;
5. Annual certification approval/denial correspondence; and
6. Narrative documentation of on-site visits and findings.

2-004.04 Providers: Providers of waiver services shall maintain the following materials for four years:

1. Individual program plans for all waiver-approved clients; and
2. Documentation which supports requests for payment under the waiver.

2-005 Billing and Payment: DPI, as specified in the interagency agreement shall submit monthly billings to DSS. The billings shall indicate the units of services provided to each client.

2-005.01 Rates: The rates paid to providers of home and community-based services are determined using the cost of providing services. Only those costs for transportation that relate directly to habilitation are included. Costs for services covered under the Medicaid State Plan are excluded. Costs for room and board are not included in the rate. Rates may be adjusted based on DPI determination of actual costs.

2-006 Client Eligibility Criteria: To be eligible for waiver services, the client must -

1. Be age 21 or older;
2. Be eligible for the Nebraska Medical Assistance Program (NMAP);
3. Currently receive ICF/MR services, or require ICF/MR services but for the availability of a home and community-based services waiver;
4. Have received an explanation of ICF/MR services and community-based waiver services and elected to receive waiver services (Form DSS-1MR);
5. Meet the ICF/MR level of care criteria (see 480 NAC 2-006.01);
6. Have documentation of a physical exam current within one year (may be waived with written documentation from the physician); and
7. Have been assessed by an Interdisciplinary Team to require and receive habilitation or Family Support Services and have a preliminary plan of care/IPP developed by the team.

2-006.01 ICF/MR Level of Care Criteria: DSS applies the following criteria to determine the need for ICF/MR services:

1. The client must have mental retardation documented in an evaluation current within three years of initial determination of waiver eligibility, and/or meet the definition of related conditions in 480 NAC 2-001.02. If the client has a dual diagnosis (i.e., mental retardation and mental illness, or a related condition and mental illness), the diagnosis of mental retardation or a related condition must take precedence over the diagnosis of mental illness; and
2. The client can benefit from habilitation that is directed toward -
 - a. The acquisition of developmental, behavioral, and social skills necessary for the client's maximum possible individual independence; or
 - b. For dependent clients where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status.

2-006.02 Client Identification: To process initial referrals, the Disability Services Specialist shall -

1. As referrals are received, from any source, contact the client or client representative to explain waiver services and options available. If waiver services are requested, complete Form DSS-5MR, "Request For Services - Mental Retardation or Related Conditions" and obtain appropriate signature;
2. Verify the client's age and NMAP eligibility;
3. Notify DPI's Developmental Disabilities Division (DDD) Service Coordination of request and provider selected on Form DSS-5MR. Service Coordination shall contact the provider or other appropriate source to obtain a completed Form DSS-2MR, "Developmental Index" or, for persons transitioning from a nursing facility, the OBRA assessment package and Form DSS-3MR, "Habilitation Services Preliminary Plan of Care." Service Coordination will forward this information to the Disability Services Specialist;

4. Review completed Form DSS-2MR and Form DSS-3MR to determine eligibility. If additional information is needed, it may be requested of Service Coordination;
5. If the client meets ICF/MR level of care and needs can be met through waiver services as proposed by provider, contact client and/or the client's legal representative and offer the choice of ICF/MR or waiver services. Document this choice on Form DSS-1MR, "Consent Form," and obtain appropriate signature;
6. At any time during the process that ineligibility is determined, complete Form DSS-6, "Client Notice of Action," and send to client and/or client's legal representative; and
7. For eligible clients, complete Form DSS-4A, "Social Services Provider Authorization," and send a copy to Service Coordination.

On an ongoing basis, the Disability Services Specialist will review all applicable information to determine continued waiver eligibility. This will include an annual redetermination based on a review of the annual IPP, current DSS-2MR, and any other requested information.

2-006.03 Authorization of Waiver Services: All waiver services must be prior authorized on Form DSS-4A within the following guidelines:

1. Under Habilitation Services -
 - a. A unit of day and residential services combined is defined as an hour;
 - b. A unit of Residential Services Habilitation is defined as an hour;
 - c. A unit of Day Services Habilitation is defined as an hour;
2. Under Family Support Services -
 - a. A unit of Independent Skills Services is defined as an hour; and
 - b. A unit of Respite Care is defined as an hour, or a day if 8 or more hours are provided in a calendar day. (Out-of-home respite shall not exceed 30 days per waiver year.);
3. Waiver services must be prior-authorized;
4. The date of waiver services prior authorization is the date the Disability Services Specialist determines that all eligibility requirements are met and services are in place;
5. The maximum number of units of waiver services entered on Form DSS-4A are based on information contained in the individual's DSS-3MR or IPP. The IPP team will determine units of service to meet identified client needs;
6. After authorization of waiver services, the Disability Services Specialist shall review all IPPs submitted. For clients receiving initial waiver approval, this will include an IPP current at 30 days after waiver authorization date. All IPPs and updates will be reviewed to determine on an ongoing basis if client continues to meet eligibility requirements and if needs are being met through waiver services.

2-006.04 Denial of Eligibility: Eligibility for services under the waiver may be denied for the following reasons:

1. A client fails to meet the eligibility criteria specified in 480 NAC 2-006;
2. The unavailability of a waiver slot;
3. The client and/or the client's legal representative or requested provider has not supplied needed information;
4. The client and/or client's legal representative has not signed Form DSS-1MR, consenting to waiver services;
5. The client and/or the client's legal representative did not sign Form DSS-5MR, "Request for Services;" or
6. Client needs are not being met through waiver services or intensity of services and supports does not reflect the need for ICF/MR level of care.

The Disability Services Specialist shall send Form DSS-6 to the client and/or client's legal representative notifying him/her of reason for determination of ineligibility. For clients found to be ineligible for waiver services after being authorized for those services, the Disability Services Specialist shall also complete a Form DSS-4A and send a copy to Service Coordination.

2-007 Provider Certification Process: Waiver services may only be provided by Medicaid providers complying with 471 NAC Chapters 1-000 through 3-000 (Nebraska Medical Assistance Program Services) as well as certified as waiver providers by the Department of Health. Case management services for waiver clients shall be provided by certified providers in accord with 480 NAC Chapter 4-000.

2-007.01 Proposal: Any provider proposing to provide waiver services shall submit in writing to the Department of Health (DOH) the "Proposal to Provide Specialized Services Under the Authority of the Nebraska Home and Community-Based Services Waiver for Persons with Mental Retardation or Related Conditions," (see 480-000-201). The proposal must include a detailed written plan for the provision of waiver services and shall be authorized by the provider's governing authority to ensure that the provider has in place all other assurances required by the waiver. DOH shall review the provider's written proposal for the provision of waiver services and shall grant approval or disapproval of the proposal. DOH may verify information contained in the proposal during on-site visits. The provider shall submit to the Department of Health the address of each day service setting and each residential service setting for approval to provide waiver services.

2-007.02 Certification: Once the proposal is approved by DOH, certification may be granted to the provider and each setting governed by the provider. Certification may be granted for up to twelve months at a time with DOH having the discretion to extend certification for an additional two months as conditions warrant. Certification is required for each provider and each setting in which a waiver client receives day services and residential services. DOH shall certify each setting before a waiver client receives waiver-funded services in the setting. Before October 1st of each year following initial waiver certification, the provider shall send an affidavit to the Department of Health confirming and/or updating the information contained in the original proposal to provide services or submit a new proposal.

2-007.03 Survey Process:

1. DOH surveyor(s) shall conduct unannounced on-site surveys and evaluate compliance for waiver and State Plan providers and the settings in which services are received by a waiver client. For services provided in sites other than certified settings, DOH may conduct a review of files, records and/or programmatic information with site visits for verification if necessary.
2. DOH shall send to the provider a statement specifying areas of noncompliance or a letter of compliance with the regulations set forth in 480 NAC Chapter 3-000.
3. The provider must provide in writing to DOH an acceptable plan of correction within ten days (calendar) of receipt of the statement from the Department of Health. The plan of correction must be specific in identifying a planned action on how the deficiency has been or will be corrected and the expected correction date.
4. DOH shall determine whether the plan of correction is acceptable. If DOH finds the plan of correction unacceptable, DOH returns it to the provider who shall submit a revised acceptable plan of correction within five days of notice from DOH.
5. DOH may conduct a resurvey after receipt of the acceptable plan of correction to determine compliance and/or progress toward compliance and obtain a new acceptable plan of correction for those deficiencies not corrected. Any additional visits may be made at the discretion of DOH.
6. A decision on continuation of certification will be made by DOH within 45 days of ending date of survey.
 - a. If the decision is to continue certification, a letter on continuance will be sent to the provider.
 - b. If the decision is non-continuation of certification, a 30-day written notice of the decision to terminate certification will be sent by certified mail.
7. If a setting is found deficient in meeting specified standards, DOH may continue certification of the setting for Medicaid purposes under the following conditions:
 - a. The deficiencies, individually or in combination, do not jeopardize the client's health and safety, nor seriously limit the provider's capacity to give adequate care or provide habilitation to meet client needs; and
 - b. The written plan of correcting the deficiencies is found acceptable.

8. If a provider or setting is found deficient in meeting specified standards, DOH shall terminate certification of the provider or setting for Medicaid purposes under the following conditions:
 - a. The deficiencies pose immediate and serious threat to the client's health and safety;
 - b. The written plan for correcting the deficiencies is found to be unacceptable;
 - c. The accepted written plan, including habilitation, was not implemented and/or maintained or the setting has established a pattern of not maintaining corrections.
9. Procedures for situations involving immediate and serious threat:
 - a. DOH shall give verbal notification to the provider of the situation involving immediate and serious threat during the course of the survey;
 - b. DOH shall notify the provider in writing (within two working days following verbal notification) of the circumstance of the immediate and serious threat situation, the decision to proceed with termination action and advising the provider of the right to due process.
 - c. If the provider submits evidence of correction or the circumstances causing the immediate and serious threat no longer exist and safeguards are in place to ensure client health and safety, the termination action may be lifted. DOH may conduct a revisit to verify the above.
 - d. The termination will become effective 20 days after the survey exit unless the threat has been removed or corrected.
10. The provider may be certified by Department of Health even though a specific setting operated by that provider is decertified.
11. Settings operated by a provider cannot be certified if the provider is not certified.
12. If during the survey process, DOH surveyors observe or become aware of issues pertaining to client eligibility for the waiver (i.e., services received, habilitation, etc.), such issues will be referred to DSS.

2-007.04 Appeal Rights: A provider of waiver services has the right to appeal DOH certification determinations and shall follow procedures in accordance with Rules of Practices and Procedures of 184 NAC Chapter 1.

2-007.05 Provider Contracts: After enrollment as a Medicaid provider and certification by the Department of Health, the Department of Public Institutions may approve the provider and contract with the provider for the provision of waiver services. The provider must have a current approved contract on file with the Department of Public Institutions to provide waiver services. Providers of waiver services to clients with developmental disabilities must also be recognized by DPI as a service provider under the provisions of 205 NAC, 1-5.

2-008 Provider Responsibilities: To maintain status as an approved provider of services to waiver clients, a provider shall -

1. Comply with regulations as set forth in 480 NAC Chapters 2-000 and 3-000 and with all assurances made in the provider's proposal to provide services;
2. Fulfill all management and reporting stipulations under the waiver as required by DSS, DPI, and DOH;
3. Cooperate with all monitoring and review activities required under waiver regulations;
4. Attend training on waiver services as deemed necessary by the Department;
5. Insure that staff have received adequate training and are capable of appropriately responding to client needs, including emergency situations;
6. Permit inspection and/or reproduction of all waiver-related records by state and federal officials or their representatives;
7. Participate in the development of the following information, as appropriate:
 - a. Form DSS-2MR, "Developmental Index" (annually);
 - b. Form DSS-3MR, "Habilitation Services Preliminary Plan of Care," (for initial determination of eligibility) or current individual program plan (for subsequent determinations of eligibility);
 - c. Individual program plan current at 30 days after authorization date (for initial determination of eligibility), to be submitted within 45 days after the authorization date; and
 - d. Other information as required; and
8. Advise the team of needed modifications to the IPP or other information affecting clients' eligibility, service locations, or status with the waiver and participate in the development of addendums to update the IPP. Note: The IPP must be submitted at least once every six months for review to determine continuing eligibility in the waiver.

2-008.01 Subcontractor Responsibilities: Subcontractors are subject to all provider certification standards and all regulations pertaining to the provision of waiver services. Noncompliance on the part of a subcontractor will be considered noncompliance on the part of the provider. Before implementation, subcontractor agreements involving services to waiver clients must be submitted to DPI.